92-1497

NO.

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM 1992

ROBERT W. LEA,
Petitioner

VS.

INDEPENDENT FIRE INSURANCE COMPANY,
Respondent

Petition for Writ of Certiorari to the
United States Court of Appeals
for the Fifth Circuit

Petition for Writ of Certiorari

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QUESTIONS PRESENTED

I.

Was the affirmance by the appellate panel of Rule 11 sanctions imposed solely against a client a violation of his due process rights, since the client was afforded neither notice nor a hearing in which to address the district court before such sanctions were imposed?

II.

Did the appellate panel err in upholding Rule 11 sanctions imposed solely against a client, when the client did not sign a pleading, motion, affidavit or any other paper subject to Rule 11?

PARTIES TO THE PROCEEDING
IN THE FIFTH CIRCUIT COURT OF APPEALS

1. Independent Fire Insurance Company
2. Robert W. Lea
3. J. Randall Lea
4. Elizabeth Lemoine Lea
5. Richard Dennis Guffey
6. Richard Dennis Guffey d/b/a
   Dick Guffey Insurance

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PETITION FOR WRIT OF CERTIORARI

The petitioner, Robert W. Lea, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit, entered in the above-entitled proceeding December 18, 1992.

OPINIONS BELOW

The opinion rendered by the United States District Court of the Eastern District of Louisiana is reported at Independent Fire Insurance Company v. Lea, 782 F. Supp. 1144 (E.D. La. 1992) and is reprinted in Appendix B, infra.

The opinion rendered by the United States Court of Appeals for the Fifth Circuit is reported at Independent Fire Insurance Company v. Lea, 979 F.2d 377 (5th Cir. 1992), and is reprinted in Appendix A, infra.

The denial by the United States Court of Appeals for the Fifth Circuit of the Petition for Rehearing and of the Suggestion for Rehearing En Banc is reported at Independent Fire Insurance Company v. Lea, Civ. Action No. 92-3174 (5th Cir. Jan. 20, 1993), and is reprinted in Appendix C, infra.

JURISDICTION

This Court has jurisdiction to review the judgment in question by writ of certiorari pursuant to 28 U.S.C. §1254(1), which provides:

> Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
>
> (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;. . .

The jurisdiction of this Court is invoked on the grounds that the United States District Court for the Eastern District of Louisiana entered its judgment against Petitioner Robert W. Lea on February 7, 1992. The District Court's judgment was affirmed on December 18, 1992 by the United States Court of Appeals for the Fifth Circuit.

Mr. Lea's Petition to the United States Court of Appeals for the Fifth Circuit for Rehearing and Suggestion of En Banc Consideration was denied on January 20, 1993. However, the Fifth Circuit granted Petitioner's motion for a stay of the District Court mandate on February 5, 1993 to and including March 7, 1993 to allow Petitioner time within which to file his Petition to this Court for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

STATEMENT OF THE CASE

This action arises out of a series of fires and acts of vandalism occurring at several apartment units in Jefferson Parish, Louisiana, owned by Robert Lea, Randall Lea and his wife Elizabeth Lea. Robert Lea actively managed the property. Randall and Elizabeth Lea live in Springfield, Missouri, and were not actively involved in its management. After the insurance on the property was cancelled by Republic Insurance Company, but prior to the occurrence of the fires and acts of vandalism, Robert Lea contacted his regular insurance agent, Richard Guffey, to secure other insurance. Guffey made an application for insurance on behalf of the Leas to Independent Fire Insurance Company (Independent) on January 4, 1990. Only Guffey's signature appeared on the insurance application. Ultimately that application

became an exhibit in the trial of the case. Out of Guffey's negotiations with Independent, for whom he had previously been an agent, and his representations to Lea, grew a claim for fire damages submitted by Robert Lea to Independent. Lea asserted coverage and Independent denied a policy had ever been issued.

Independent filed suit in the United States District Court for the Eastern District Louisiana for declaratory relief pursuant to 28 U.S.C. §§2201-02 and 28 U.S.C. § 1332, seeking a declaration that it had not issued a policy on the Leas' property. The Leas counter-claimed against Independent for the fire damages, for which they had previously submitted claims, and cross-claimed against Guffey for damages in the event the Court found that Independent had not issued a policy or binder. On March 28, 1991, an Amended

Counterclaim seeking additional damages and penalties should the Court find that Independent's refusal to pay the claim was arbitrary and capricious was filed on behalf of the Leas. It was signed solely by the Lea's counsel Bruce Cranner and was not verified by the Leas. On April 9, 1991, Cranner submitted additional claim forms to Independent. Those claim forms were signed by Robert Lea and eventually became exhibits at the trial of the case.

Following trial, the District Court found that there was no fire insurance policy issued by Independent because there was no "meeting of the minds." The court further found that there was no basis for the Leas' counter-claim and that there was insufficient evidence to sustain the Leas' cross-claim against Mr. Guffey. Since there was no contract, there could be no rescission and thus no damages

awarded to Independent for fraudulent rescission under Louisiana law.

Sua sponte, the District Court found a Rule 11 violation by the Leas:

> . . . based on egregious conduct of Robert Lea, to wit: (1) ratifying the actions of Guffey [knowingly setting forth material misrepresentations in the 1/4/90 application for insurance submitted to Independent Fire]; (2) adding insult to injury by amending his counterclaim to seek penalties and attorneys fees against Independent Fire at a time when he was well aware of Guffey's misrepresentations contained in the application submitted to Independent Fire on their behalf; and (3) filing supplemental proofs of loss quadrupling the amount of the meritless claims against Independent Fire and thereby needlessly increasing the costs/expenses associated with investigating claims, trial preparation

> and proceedings which ensued.

Independent Fire Ins. Co. v. Lea, 782 F. Supp. 1144, 1158 (E.D. La. 1992). Although multiple pleadings were filed in this action by all parties, no request for Rule 11 sanctions against any party was ever made prior to their imposition by the Court solely against the Leas. Thus, without giving the Leas an opportunity to be heard, the District Court imposed Rule 11 sanctions solely against them for (1) an application for insurance signed by Richard Guffey and not by any of the Leas which application was never anything more than a trial exhibit; (2) an amended counterclaim filed as a pleading signed solely by the Leas' attorney and not verified by them; and (3) a proof of loss signed by Robert Lea and submitted to Independent which ultimately became a trial exhibit at the trial of the matter.

No notice was ever given the Leas that Rule 11 sanctions were implicated or being considered and no hearing was granted the Leas to respond to the Rule 11 accusations. The District Court, in a footnote appended to its judgment, found that Independent's second supplemental and amending complaint alleging damages for rescission based on fraud, but containing no mention of Rule 11 and filed just six days before trial, was "more than sufficient notice for the imposition of Rule 11 sanctions . . . "[1] The sanctions on the Leas alone were attorneys' fees and costs incurred by Independent from the date of

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[1]Independent's amended complaint had been attempted in November, 1991 but was denied by the Magistrate because it came too late and would have necessitated reopening discovery. At pre-trial on Dec. 28, 1991 the district court overruled the Magistrate and permitted the filing of the amended complaint on December 31, 1991 and required the case to go to trial on January 6, 1992, despite a request by a defendant for a continuance.

Robert Lea's March 25, 1991 deposition through the filing of post-trial memoranda, totalling $50,396.89, with interest from the date of judgment. No Rule 11 sanctions were considered or found against the Leas' attorneys. No Rule 11 sanctions were considered or imposed on Richard Guffey.

Both Independent and the Leas appealed the decision of the District Court. On December 18, 1992, on the summary calendar without oral argument, a Panel of the Fifth Circuit Court of Appeals issued a Per Curiam opinion affirming the decision of the District Court in all respects except the imposition of sanctions against Randall and Elizabeth Lea which were struck from the Rule 11 judgment. Independent Fire Ins. Co. v. Lea, 979 F.2d 377 (5th Cir. 1992). Robert W. Lea filed a Petition for Rehearing by the Panel and a Suggestion for En Banc Consideration, both of

which were denied on January 20, 1993. The Fifth Circuit then granted Mr. Lea's motion to stay the issuance of the mandate to and including March 7, 1993, to allow Mr. Lea time within which to petition this Court for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

ARGUMENT

The Fifth Circuit's Panel decision violated two well-established Rule 11 principles:

1) When sanctions are applied to a party alone, as opposed to his attorney, both notice and a hearing directed to the Rule 11 issue are mandated by due process. See Chambers v. NASCO, Inc., - U.S. -, 111 S. Ct. 2123, 115 L. Ed. 2d 27, (1991), 1488, Inc. v. Philsec Inv. Corp., 939 F.2d 1281 (5th Cir. 1991); see also Thomas v. Capital Sec. Services, 836 F.2d 866, 879-881 (5th Cir. 1988)(en banc).

2) In order for anyone to be sanctioned under Rule 11 they must be a party covered by the Rule and have signed a paper which is covered by Rule 11, which papers are the formal pleadings and their attachments, such as supporting

affidavits, which are filed into the record. Fed. R. Civ. P. 11; Fed. R. Civ. P. Rule 7(b)(2); Advisory Committee Notes to 1983 Amendment to Rule 11; Business Guides v. Chromatic Communications Entr., 498 U.S. 533, 111 S. Ct. 922, 929, 112 L. Ed. 2d 1140 (1991).

1.

The imposition of Rule 11 sanctions by the district court upon a client alone with neither notice nor an opportunity to be heard, and the affirmance of the imposition of such sanctions by the Fifth Circuit Panel opinion constitute a departure from well-settled jurisprudence and from the usual course of judicial proceedings.

The issue of a hearing on Rule 11 sanctions as a due process requirement when a party alone is involved has never been specifically addressed by this Court, not

surprisingly, since such imposition is contrary to the established and usual course of judicial proceedings. This Court has addressed however, the imposition of sanctions upon a client alone by a district court's use of its inherent power when Rule 11 and 28 U.S.C. § 1927 were deemed by that court insufficient to support such sanctions. Chambers v. NASCO, Inc., - U.S.-, 111 S. Ct. 2123, 115 L. Ed. 2d 27, (1991), reh'g denied 112 S. Ct. 12, 115 L.Ed.2d 1097 (1991). Notably, only after a motion and following full briefing and a hearing, did the district court in Chambers impose sanctions in the form of attorney's fees and expenses against the client alone. The hearing was not the first occasion on which Chambers, the party in that case, was given both notice and an opportunity to be heard on the issue of the sanctionable nature of his conduct and the conduct of his

attorneys. This Court noted that Chambers received repeated timely warnings both from his opponent and the district court that his conduct was sanctionable. Id. at 2139. The litigation in Chambers v. NASCO, Inc., supra, began as an action by NASCO for specific performance on a contract with Mr. Chambers in which Chambers was to sell a television station to NASCO. However, since the agreement was subject to the approval of the Federal Communications Commission (FCC), Chambers was able to prevent the consummation of the sale by his delay in filing the necessary papers with the FCC. Chambers informed NASCO that he would not file the papers, at which time NASCO took legal action. The action taken by NASCO included the suit for specific performance as well as a temporary restraining order (TRO) to prevent Chambers from alienating or encumbering the

properties in the contract. Chambers was given notice of these actions through Federal Rule of Civil Procedure 65 and Rule 11 of the District Court's Local Rules (now Rule 10). Both of these rules are designed to give a defendant in a TRO application notice of the hearing and an opportunity to be heard. Chambers placed the properties in trust, thereby placing them out of NASCO's reach. The reaction of Chambers and of his attorney was later described by the District Court as an emasculation of the Court's powers by using that notice to prevent NASCO's access to the remedy of specific performance. Id. at 2128. The Court entered a second TRO to prevent the alienation or encumbrance by the trustee of the properties in trust. At that hearing, the District Judge warned that Chambers' and his attorney's conduct had been unethical. Id. at 2129. Despite the Court's early warning,

Chambers, often through his attorney, continued to abuse the judicial process. This abuse resulted in civil contempt proceedings and in the assessment of a $25,000 fine against Chambers personally. Id. Chambers, however, proceeded with a "series of meritless motions and pleadings and delaying actions." Id. These actions elicited further warnings from the court, including the District Judge's sua sponte calling of a status conference to question and prevent some of the actions. At another status conference nine days before trial, the District Judge again warned Chambers' attorney that further misconduct would not be tolerated. The Judge even gave counsel copies of Judge Schwarzer's then-recent article, Sanctions Under the New Federal Rule 11 - A Closer Look, 104 F.R.D. 131 (1985). Id. at 2129, n. 3.

Between trial and the entry of judgment,

Chambers applied to the FCC for permission to build a new transmission tower and to relocate the transmission facilities to that site. The new site was not covered by the agreement with NASCO. NASCO sought contempt sanctions at which time Chambers withdrew the application. NASCO sought contempt sanctions a third time when Chambers convinced the television station officials to file formal opposition to NASCO's application for FCC approval of the transfer of the station's license.

When Chambers refused to close the sale on the basis that certain equipment was not to be included in the sale, NASCO sought the court's help. At the beginning of the hearing, the court warned Chambers' new attorney that further sanctionable conduct would not be tolerated. Chambers removed all of the equipment in dispute without notice to the court or NASCO, forcing the court to order

its return.

The Court of Appeals, ruling from the bench, found Chambers' appeal from the District Court's judgment on the merits frivolous and imposed appellate sanctions in the form of attorney's fees and double costs, pursuant to Federal Rule of Appellate Procedure 38. The Court of Appeals remanded the case to the District Court with orders to fix the amount of appellate sanctions and to determine whether further sanctions should be imposed for the manner in which the litigation had been conducted. Id. at 2130; NASCO, Inc. v. Calcasieu Television & Radio, Inc., 797 F.2d 975 (5th Cir. 1986)(per curiam)(unpublished order).

On remand, NASCO moved for sanctions, invoking the District Court's inherent power, Fed. Rule Civ. Proc. 11, and 28 U.S.C. §1927. Only after full briefing and a hearing did the

District Court determine that sanctions were appropriate from the time that NASCO gave notice of its intention to file suit. Chambers v. NASCO, Inc., 111 S. Ct. at 2130.

The assessment of sanctions at the conclusion of the litigation has also concerned the Fifth Circuit. In Thomas v. Capital Sec. Services, Inc., 836 F.2d 866, 889 (5th Cir. 1988), the Fifth Circuit agreed with the Ninth Circuit and concluded that a court should at a minimum notify the individual certifying the document that Rule 11 sanctions will be assessed at the end of trial if appropriate. Id. (citing, with approval In re Yagman, 796 F.2d 1165, 1184 (9th Cir. 1986), cert. denied, 484 U.S. 963, 108 S. Ct. 450, 98 L.E.2d 390 (1987)).

The sanctions in Chambers, supra, although assessed after trial, accordingly "did not represent an end run around the

notice requirements of Rule 11." Id. at 2139. Chambers had received repeated timely warnings both from NASCO and the court that his conduct was sanctionable.

Thus, the Chambers decision, with its record of notice clearly set forth, cannot support the awarding of sanctions against Robert Lea. The Fifth Circuit Panel's opinion did not reach the issue of lack of notice to Robert Lea of possible Rule 11 sanctions and the lack of a due process hearing at which sanctions solely against a party are considered. Neither is the Panel's reliance on this Court's decisions in Business Guides, supra, and Cooter & Gell v. Hartmarx Corporation, 496 U.S. 384, 110 S. Ct. 922, 110 L. Ed. 2d 359 (1990), dispositive of the notice and hearing issues, since those cases involved multiple Rule 11 hearings involving the parties or substantial notice of Rule 11

sanctions involvement in both cases.[2]

Petitioner was basically afforded an opportunity to mount a defense "on the spot" which, according to the Fifth Circuit in 1488, Inc. v. Philsec Inv. Corp., 939 F.2d 1281, 1292 (5th Cir. 1991), does not comport with due process.

In the instant case, Rule 11 was never mentioned by anyone until the district court opinion invoked it. Independent's mention of Rule 11 sanctions came in a memorandum filed after the district court judgment and then was limited to sanctions against Richard Guffey, the signer of the original insurance application long before litigation was

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[2]In Cooter & Gell, there was ample evidence of Rule 11 notice to the party although the record of the case does not disclose a hearing. However, a hearing was not necessary to the disposition of the case. The issue was the jurisdiction of the district court to impose Rule 11 sanctions after a party had voluntarily dismissed a case.

instituted by Independent. Further, the issue of attorney's fees was raised by Independent by amended complaint, relying on Louisiana rescission law and filed six days before trial. This Amended Complaint was heard in spite of a request for a continuance at pre-trial. That claim was rejected by the district court and affirmed by the Panel.

Clearly Robert Lea had no notice that any of his actions were sanctionable under Rule 11. The cases relied upon by the appellate court are not determinative of the matter, in that the imposition of sanctions solely on a client was done after notice was given and opportunity for hearing was had. The appellate court's refusal to overturn the sanctions imposed on Lea could not have considered this crucial threshold matter. The sanctions should thus be reversed.

The Fifth Circuit Panel decision represents the first decision in federal jurisprudence applying Rule 11 to a client who had not signed a paper covered by Rule 11 and is directly contrary to the text of the Rule, the Advisory Committee's explanation of the 1983 amendment to the Rule, prior Fifth Circuit jurisprudence and this Court's jurisprudence upon which the Panel decision relies.

A signature on a pleading or a document attached to and supporting a pleading is the sine qua non of Rule 11 whether it is the signature of an attorney or a party. The text of Rule 11 provides that "[t]he signature of an attorney constitutes a certificate by the signer that ... to the best of the signer's knowledge, information and belief formed after a reasonable inquiry, it is well grounded in

fact." This Court in Business Guides v. Chromatic Communications Enterprise, Inc., supra at 929, relied upon by the Panel, referred to the presence of a signature as the "heart of Rule 11." The Fifth Circuit, in its en banc consideration of Rule 11 in Thomas, supra, spoke as follows at 836 F.2d at 874:

> Like a snapshot, Rule 11 focuses upon the instant the picture is taken - when the signature is placed on the document. Rule 11 was promulgated for a particular purpose - to check abuses in the signing of pleadings. Fed. R. Civ. P. advisory notes.
>
> * * *
>
> Moreover, the advisory committee notes to the amended rule support our conclusion that Rule 11 applies only to the signing of pleadings and imposes a standard of good faith and reasonable investigation as of the date of that signing.

(Emphasis supplied)

The signed documents covered by Rule 11 are limited to "a pleading, motion, or other paper." Robert Lea's signature appears nowhere on any pleading or motion.

Significantly, the "papers" referred to in the Rule do not include documentary evidence unless that evidence is attached to a pleading, such as an affidavit, in support of a complaint or a temporary restraining order. See Cooter & Gell v. Hartmarx Corporation, 496 U.S. 384, 110 S. Ct. 922, 110 L. Ed. 2d 359 (1990); and Business Guides v. Chromatic Communications Entr., 498 U.S. 533, 111 S. Ct. 922, 929, 112 L. Ed. 2d 1140 (1991).

The district court based its sanctions on three pieces of evidence, none of which are the papers contemplated by Rule 11. The three items were:

a) An insurance application submitted to Independent Fire Insurance Company in January 1990 signed by Richard Guffey, but not Robert Lea, which was simply an exhibit introduced in evidence.

b) An amended complaint filed on behalf of

the Leas in March of 1991 which was signed solely by the Leas' attorney, Bruce Cranner. No verification or supporting affidavits signed by the Leas were attached to this pleading.

c) Supplemental proofs of loss submitted to Independent in April, 1991 by the Lea's attorney and signed by Robert Lea which were filed with the insurance company but were simply exhibits introduced at trial.[3]

The Panel in its decision in the instant case, went against the Fifth Circuit's en banc decision in Thomas, which held that the expansion of Rule 11 to include all papers

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[3]The District Court relied on all three of these items. Independent Fire Insurance Co. v. Lea, 782 F. Supp. 1144, 1158 (E.D. La. 1992), aff'd and amended 979 F.2d 377 (5th Cir. 1992). The Panel mentioned only the first two items in affirming the district court. Independent Fire Ins. v. Lea, 979 F.2d 377 (5th Cir. 1992).

filed in court still related to "legal papers." Thomas, 836 F.2d at 870 n. 2. Those "legal papers" are not every piece of paper involved in the case:

> While the drafters of the rule could easily have further extended its application by reference to the entire conduct of the proceedings, they failed to do so and instead chose to expand only the categories of papers to which the rule applies.

Thomas, 836 F.2d at 875, n. 11 (citing, with approval Oliveri v. Thompson, 803 F.2d 1265, 1274 (2d Cir. 1986) cert. denied - U.S.-, 107 S. Ct. 1373.)

The Sixth Circuit in Homico Const. & Div. v. Ti-Bert Systems, 939 F.2d 392 (6th Cir. 1991), stated in dicta that a non-signing client may be sanctioned under the "represented party clause of Rule 11 if it is determined that his attorney has filed a pleading or other paper which is frivolous or filed for an improper purpose. However, the

Sixth Circuit reversed those sanctions which were imposed against the Superintendent of Insurance of the State of New York. The Sixth Circuit stated that the district court specifically concluded that the attorney did not violate Rule 11 in filing any pleading or paper. Thus, the client could not be sanctioned under the "represented party" clause of Rule 11. In the instant case, neither the district court nor the Fifth Circuit Panel found that Mr. Lea's attorney, Mr. Cranner, had violated Rule 11. Neither did the district court impose sanctions on Richard Guffey, the insurance agent who signed the insurance application (and who was the only party against whom Rule 11 sanctions were sought by Appellee Independent).

The Fifth Circuit Panel has thus, without any discussion of liability under the "represented party" clause of Rule 11, appears

to have upheld the sanctions imposed on Robert Lea without any finding that he signed a paper subject to Rule 11 and without any finding that his attorney violated Rule 11. Such a result is contrary to this Court's decisions in Business Guides and Cooter & Gell and violative of the Circuit's Thomas decision as well. The sanction should thus be reversed.

CONCLUSION

Robert Lea was never notified that any of his conduct was potentially sanctionable under Rule 11. Robert Lea had no opportunity to defend himself. Moreover, Lea's counsel, who actually signed the pleadings at issue, was not sanctioned.

Significantly, the sanctions imposed against Lea are based apparently on his signing of claim forms, which were introduced as evidence in this matter. In upholding the sanctions award, the Fifth Circuit Panel

improperly extended the scope of Rule 11 to include signatures on documents merely introduced as evidence in a case. After agreeing with the trial judge that no contract existed because no meeting of the minds had occurred, the Fifth Circuit inexplicably upheld the sanctions based, in part, on Lea's signature on forms he had to file in order to protect the claims he had already brought in this litigation.

Petitioner Robert Lea thus prays that this Honorable Court grant his Petition and reverse the decision of the Fifth Circuit upholding sanctions against him.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 4th day of March, 1993 to counsel to all parties, by delivery of same by Hand Delivery, or by placing a copy of same in the United States Mail, postage prepaid and properly addressed.

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Counsel of Record for Petitioner

By: _____
JOHN R. MARTZELL

STATE OF LOUISIANA

PARISH OF ORLEANS

SWORN TO AND SUBSCRIBED before me the undersigned authority this 3rd day of March, 1993.

_____
NOTARY PUBLIC
State of Louisiana